



Yellowstone County Zoning Commission Minutes for the Meeting of Monday, January 12, 2009

The County Zoning Commission met on Monday January 12, 2009 in the large conference room on the 4th floor of the Parmly Library, 510 North Broadway.

Oscar Heinrich, Chairman, called the meeting to order at 4:01 p.m.

Commissioners and Staff		01/12/09	15/09/09	03/09/09	04/13/09	05/11/09	06/08/09	07/13/09	08/10/09	09/08/09	10/13/09	11/09/09	12/14/09
Oscar Heinrich	Chairman	1											
Jerome Musselman	Vice-Chairman	1											
Al Littler	Commissioner	1											
Joan Hurdle	Commissioner	1											
Dennis Cook	Commissioner	1											
Nicole Cromwell	Planner II/ Zoning Coordinator	1											
Wyeth Friday	Planner II	-											
Aura Lindstrand	Planner II/Subdivision Coordinator	-											
Dave Green	Planner I	1											
Juliet Spalding	Planner II	-											
Lora Mattox	Planner II	-											
Elizabeth Allen	Planning Clerk	1											

Chairman Heinrich introduced the County Zoning Commission members and staff in attendance:

Nicole Cromwell, Planner II/Zoning Coordinator
Dave Green, Planner I
Elizabeth Allen, Planning Clerk

ANNOUNCEMENTS:

There were none.

Motion

The minutes of November 10, 2008 were approved without objection.

Public Hearings:

Chairman Heinrich reviewed the rules for the procedure by which the public hearings will be conducted. He said the applications heard at this meeting would be forwarded to the BOCC at their meeting of January 27, 2009.

Item #1: County Zone Change #619 – Flaming Creek Drive – A zone change request from Agriculture Open-Space (A-1) to Agriculture Suburban (A-S) on a 11.36 acre parcel of land, Lot 1, Block 1 Flaming Creek Subdivision, Tax ID: C14690. James & Marilyn Threatt, owners and HKM Engineering, agent.

Nicole Cromwell read the legal description and **Dave Green** reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. Staff is recommending approval of County Zone Change #619.

Discussion:

Commissioner Hurdle asked for clarification as to what portion of the property is in the floodplain. **Mr. Green** clarified the area. **Commissioner Hurdle** asked what amount of property is not within the floodplain, what would be available for subdivision and building. **Mr. Green** clarified what property is buildable. **Commissioner Hurdle** asked what the access to the property is. **Mr. Green** stated that access to the property is off of Flaming Creek Drive. **Mr. Green** stated that the applicant is proposing lots of 4 acres each.

Public hearing opened at 4:09 p.m.

Applicant:

Chris Clark 222 North 32nd, Dowell HKM, agent for owner, clarified the 100 year flood plain area for these lots. The concerns of adjacent residents will be addressed through DEQ and through County Subdivision Regulations.

Commissioner Littler asked if there is an existing road maintenance agreement for the cul-de-sac. **Chris Clark** stated that there was supposed to be a RSID established when the property was subdivided 2003. He is not sure if that RSID has been established at this point. **Commissioner Heinrich** asked if this subdivision will affect the ability of other land owners to have livestock. **Chris Clark** stated that the CCR's allow for horses but no other types of livestock.

Proponents:

There were none.

Opponents:

Tony Ostemier 1985 Mary St, opposed to the subdivision.

Kristen Ostemier 1985 Mary St, passed out a paper to the Board including their concerns regarding the proposal. They are concerned that this could allow 6 or 7 homes on this property. There is also the flood plain in the area and a bike path in the area. They are also

concerned about the increase in vehicle and pedestrian traffic, the fact that there is no fire protection in the area and there is a lot of wildlife in the area that may be disturbed. **Commissioner Littler** asked what fire protection they have in the area. **Kristen Ostemier** stated that they are under the Shepherd Volunteer Fire Department area. **Commissioner Heinrich** asked if there was any response from Shepherd Fire. There was not.

Doug Gullet 2430 Flaming Creek, one of the biggest concerns is that if they have new drain fields and wells in the area the drain fields will drain into his land. The RSID in the area is not working. They put money in every year and then they have to go out and get bids for having the road grated. They have not had the ability to get quotes for the grating of this property because the different companies will not even give a bid for grating this road because it is so short and it is not worth their time. If they add more wells in this area the wells will run dry and they will have to use cisterns. They moved to this area so that they could have horses and they are concerned that if they have smaller lots in the area it will ruin the feeling of the neighborhood.

Hilliary Gnerer, 2425 Flaming Creek Dr, they looked for a year before they bought this land. They chose this property because all the properties have acreage and this has a private street. This road is not really wide enough for 2 cars to pass and she is concerned for the safety of the children in the area. She is also concerned if they ever wanted to add livestock to their property the potential new home owners would have a greater say in whether the CC&R's could be changed.

Greg Gnerere, 2425 Flaming Creek Dr, he agrees with the concerns voiced by the other neighbors. The road is a very large concern. The road is not capable of handling extra traffic. The wells in the area are pumping at a bare minimum. They bought in this area because they wanted to live in an area that has larger acre lots. The proposed lots have a very good chance of flooding because a lot of the area is very swampy. He is also concerned that this might affect their property values and he has done a lot of work on his property. He also asked if rezoning this property would affect the taxes of the other lots.

Bob Ostemeir, owns the adjacent property, he has invested $\frac{3}{4}$ million dollars in his property with the addition of outbuildings and such. He is very concerned as to how this will affect his property values. The area is very swampy and there is a large amount of lot area that will not be buildable.

Mona Gullet, 2430 Flaming Creek, is opposed to the zone change.

Joy Ostemeir 1890 Mary Street, is opposed to the zone change.

Rebuttal:

Chris Clark stated that the RSID is not really relevant to the zone change although the addition of 3 more lots will add to the RSID and may help add some weight to the RSID. The subdivision was approved with the ability for wells to be drilled. The worries about wells will be addressed by DEQ during the subdivision review process. These lots may have to go to cistern because the wells may not handle the additional lots. Although applicant is asking for a change from a 10 acre lot minimum to a 1 acre lot minimum the intention of the property owner is not to have one acre lots; they are looking at 2 acre lots. The CCR's stated that livestock is not allowed with the exception of horses. They are not planning to make any changes to those restrictions.

Discussion:

Hilliary Gnerer asked if there is a possibility of the lots being divided smaller than two acres. **Ms. Cromwell** stated that new lots can be created up to the one acre lot minimum, however because of the hardships of the land there would never be a possibility of creating one acre lots in this area.

Commissioner Heinrich asked where this falls within the annexation boundaries. **Mr. Green** clarified where this property is located. **Commissioner Heinrich** asked if this property would require subdivision review. **Mr. Green** stated that it would be processed under subdivision regulations if the property was subdivided.

Commissioner Hurdle feels that it is inappropriate to recommend approval on this property. There are many concerns including fire protection, roads, water concerns and she feels that it is inappropriate for this board to be asked to make this decision with the limited amount of information that they have been given. **Commissioner Littler** feels single family land use is appropriate for this area. All of the other concerns will be addressed during the subdivision review process. **Commissioner Hurdle** objects to the way the 12 criteria have been addressed with this application. She doesn't feel that they have been addressed appropriately. She just doesn't feel that the 12 criteria have been addressed correctly in this application.

Commissioner Musselman does have concerns about the water situation.

The board gave the following reasons to deny the zone change based on the 12 criteria.

#2- the streets are inadequate

#3- the fire access is inadequate for this area

#6- the zoning with smaller lots will cause over crowding

#7- it will concentrate populations

#8- access to drinking water and waste water disposal is inadequate

#9- ruins the purpose of living on large lots if 1 acre lots are created

#12- not appropriate land use

Motion:

On a motion by Commissioner Littler to approve, seconded by Commissioner Cook, and failed with a 2-3 voice vote with Commissioner Musselman, Commissioner Hurdle and Commissioner Heinrich voting against a recommendation of denial will be forwarded to the BOCC on its meeting of January 27, 2009.

Other Business:

Election of Officers:

On a motion to elect Commissioner Heinrich as Chair by Commissioner Musselman, seconded by Commissioner Hurdle and approved by a 5-0 voice vote Commissioner Heinrich was elected Chair.

On a motion to elect Commissioner Musselman as Vice-Chair by Commissioner Littler, seconded by Commissioner Heinrich and approved by a 5-0 voice vote Commissioner Musselman was elected Vice-Chair.

PUBLIC COMMENT

Chairman Heinrich asked if there was anyone else wishing to speak during the public comment portion of the meeting. **Chairman Heinrich** stated that any member of the public may be heard on any subject that is not on the agenda, and that the Yellowstone County

Zoning Commission will not take any action on these items at this time, but could choose to add an item to the next meeting's agenda for discussion.

There were none.

Adjournment:

The meeting was adjourned at 4:41 p.m.

Oscar Heinrich, Chairman

ATTEST:

Elizabeth Allen, Planning Clerk